



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM-110(f)-80-1-10-003 X

January 10, 1980

OFFICE OF ENFORCEMENT

MEMORANDUM

Subject: Alternate Procedure for Section 110(f)
Relief in Localized, Short Term Energy
Emergencies

From: Acting Assistant Administrator for
Enforcement

Assistant Administrator for Air, Noise
and Radiation

To: Regional Administrators
Regions I-X

Recent discussions with various state environmental and energy personnel have focused our attention on the inappropriateness of our current Section 110(f) guidance on procedures for obtaining Presidential emergency declarations and subsequent suspension of State Implementation Plan requirements necessitated by short term, localized situations where no alternative action appears to be adequate (e.g., harbor disruptions, unanticipated distributor delivery delays). The Section 110(f) mechanism is the only manner in which the Clean Air Act permits suspension of State Implementation Plan requirements, with the attendant release from federal liability for their violation, under energy emergency circumstances. Some of our existing procedures for handling Section 110(f) requests have occasionally proved too cumbersome relative to the immediacy of these short-term, localized energy problems.

Our staffs, in coordination with several regional and State officials, have developed the following procedures which we believe mitigate the existing problems while complying with the intent of Section 110(f) for these limited emergency situations. National or regional energy emergencies which are ineligible for the expedited approach described

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below, remain subject to earlier guidance of March 6, and July 2, 1979. (Copies of these memoranda, as well as a sample Presidential declaration for short term emergencies falling within the scope of this guidance, are attached for your convenience.)

Applicability of Expedited Procedures

Expedited procedures are available only where relief necessary as a result of the emergency is anticipated to last less than 30 days, and is limited to a localized problem due to unavailability of conforming fuel. This expedited procedure may not be used for 110(f) petitions based on unusually high price differentials between conforming and nonconforming fuels; these petitions must conform to earlier guidance. All other energy emergency situations (e.g., a regional problem anticipated to last 2 or 3 months) require literal compliance with the statutory procedures of Section 110(f).

EPA will recommend that any Presidential declaration granted under these expedited procedures expire, by its own terms, no later than 30 days from issuance, and permit suspensions of SIP requirements only for those sources (including distributors where applicable) affected by the unavailability of conforming fuel. These expedited procedures are generally inappropriate where gubernatorial suspensions across an entire state or industry category are necessary.

I. Procedures for Expedited Relief

A. State Notice and Opportunity for Hearing Prior to Petition

Due to the short reaction time and short possible effective period of any suspension, public notice and opportunity for a hearing prior to a petition, while strongly encouraged, are not required for EPA to recommend a Presidential declaration. Such hearings are held to consider both the existence and extent of the emergency and the impacts of any suspensions which may be granted should an energy

emergency be declared. Where no opportunity for a hearing was offered prior to the Governor's petition to the President, EPA will recommend that any declaration be conditioned on the requirement that such hearings being held within 10 days after the declaration, and that such a declaration expire by its own terms if a hearing is not held within that time.

Should the state later determine that the emergency situation will or is likely to last longer than the 30 days covered by the declaration, an additional hearing, prior to the Governor's request for an extension of the Presidential declaration, is required.

B. The Governor's Petition to the President and Supporting Documentation

Due to the short time period for 110(f) relief effectiveness under these expedited procedures, an extensive petition to the President from the Governor is not needed; however, a written or telegraphic request from the Governor for the declaration, based on consultation with both State energy and environmental personnel, is required. A prior telephone communication from State staff to the appropriate EPA Regional Office, explaining the circumstances of the emergency and the forthcoming request, will expedite the procedure. A brief statement of the basis for the request, including the approximate number and types of sources affected, the apparent cause of the emergency, efforts made to alleviate the situation through other means and why those efforts are insufficient, a summary of available information on possible unemployment and/or loss of necessary residential energy supplies, and (wherever possible) a discussion of potential air quality impacts of anticipated suspensions, should accompany the Governor's request. A brief discussion of alternate measures for alleviation of the difficulty without emission increases (e.g., load shifting, conversion) should be included. If the petition is made without prior notice and opportunity for a hearing, the request should indicate why such notice and hearings could not be held prior to the request.

II. Subsequent Documentation and Air Quality Considerations

Additional documentation, including that collected through the public hearing, should be submitted to EPA as soon as possible after the hearing. This documentation should include detailed information on the topics addressed briefly in the petition as well as any air quality information, such as monitoring data and records of emissions from facilities granted suspensions during the period of the declaration. In addition, where unavailability of conforming fuel is involved, written documentation of source/distributor efforts to obtain conforming fuel must be submitted.

Many states have the capability of producing ambient air quality projections in a tight time frame, or have modeled sources and know the maximum allowable emissions which will protect air quality. States should be urged to perform any necessary air quality modeling and other environmental impact analyses before an energy emergency arises, in order to have this information quickly available.

III. EPA Involvement

EPA has two roles in the 110(f) process -- the statutory authority to disapprove gubernatorial suspensions and the responsibility for recommending action to the President on petitions for declarations of energy emergencies. To adequately perform its responsibilities, the Agency must maintain close communication with the state involved. The following communication patterns should be followed to assure expeditious EPA action:

1. Earliest possible telephone notification of the emergency should be made by the State to the EPA Regional office. The energy contact in the Regional office should immediately inform Jean Vernet of DSSE (FTS 755-2553) of this communication from the State, in order to expedite any response. Providing headquarters with names and telephone numbers of the involved State personnel (e.g., energy, environmental, and public utility commission staff) has proven to be extremely useful, especially where the immediacy of the situation requires speedy information gathering.

2. A copy of the petition to the President should be sent to the Administrator, Attention: Edward Reich, Director, Division of Stationary Source Enforcement, at the same time as it is submitted to the President. A copy of the petition and all supporting data should be sent to the EPA Regional Office. This will eliminate the delay involved in transmittal from the White House, and will permit EPA to quickly prepare a recommendation and draft a declaration for signature of the President.
3. The EPA Regional office should be given notice of any state hearing. EPA will attend and participate to the extent a state requests and the Agency is able. Copies of transcripts of all hearings should be sent to the EPA Regional office.
4. Copies of all gubernatorial suspensions of SIP requirements, together with any supporting materials, should be sent to the EPA Regional office.
5. Copies of all source/distributor submittals should be sent to the EPA Regional Office directly by the source/distributor, if possible or by the State.
6. The State environmental and energy offices and the EPA Regional Office should maintain close communication throughout the energy emergency period, to monitor the existing situation and hopefully to foresee any additional, longer term or broader problems.
7. The energy emergency contact in the Regional Office should maintain close communication with DSSE to facilitate any necessary headquarters actions on the emergency.

Attachment


Jeffrey G. Miller


David G. Hawkins

SAMPLE

MEMORANDUM FOR THE ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY

Based on a request submitted to me by the Governor of _____, I hereby declare that a regional energy emergency exists in the State of _____ of such severity that temporary suspension of certain air pollution control regulations which apply to _____ under the _____ Air Quality Implementation Plan may be necessary, and that other means of responding to the energy emergency may be inadequate. This determination shall expire (30 days from issuance), and is made upon condition that the necessary hearings be held with ten days. If hearings are not held, this determination will expire (ten days from issuance).

If, during the emergency, I find that a regional energy emergency no longer exists in _____, I will direct that this determination be rescinded, and that all suspension orders issued by the Governor be

terminated on the day of that rescission. Please continue to work with State officials to monitor carefully the situation in _____ and to inform me if the emergency should cease to exist. You will continue to retain full authority to disapprove temporary suspension of regulations in _____ and to exercise your emergency powers authority under Section 303 of the Clean Air Act, when and if necessary.

While my determination permits the temporary suspension of certain emission limiting requirements, I urge Governor _____ to exercise caution in granting these suspensions, in order to protect, to the fullest extent possible, the public health and welfare. (This determination shall be published in the Federal Register.)